

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARTIN GUGINO,

Plaintiff,

v.

**NOTICE OF MOTION  
PURSUANT TO  
Fed. R. Civ. P. 37,  
Rule 30(d)(3), and the court's  
inherent power**

CITY OF BUFFALO,  
MAYOR BYRON BROWN,  
POLICE OFFICER ROBERT McCABE,  
POLICE OFFICER AARON TORGALSKI,  
POLICE OFFICER JOHN LOSI,  
POLICE COMMISSIONER  
BYRON C. LOCKWOOD,  
DEPUTY POLICE COMMISSIONER JOSEPH GRAMAGLIA,

Case No.: 1:21-cv-00283

Defendants.

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PLEASE TAKE NOTICE that, upon the accompanying (a) Affidavit of Melissa D. Wischerath, Esq., dated January 12, 2024; and (b) Memorandum of Law in Support of Plaintiff's Motion to Compel pursuant to Fed. R. Civ. P. 37 and 30 (d)(3) and the Court's inherent powers; Plaintiff will move this Court at the courthouse located at 2 Niagara Square in Buffalo, New York on January \_\_\_\_, 2024 at \_\_\_\_ a.m./p.m., or as soon thereafter as counsel can be heard, for an Order pursuant to Fed. R. Civ. P. 37 Rule 30(d)(3) and the court's inherent power as follows: (a) for an expedited hearing of its motion pursuant to compel non-party, John Evans, to answer all questions posed to him at his deposition; (b) ordering the attorney for the non-party witness to refrain from speaking objections and deposition obstruction and sanctions; and (c) such other and further relief as this Court deems just and proper.

Dated: Buffalo, New York  
January 12, 2024

**LIPSITZ GREEN SCIME CAMBRIA, LLP**

/s/ Melissa D. Wischerath